IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1411 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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BALDEVBHAI GELABHAI PRAJAPATI - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR JV JAPEE for Appellant(s) : 1,
MS DS PANDIT APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 18/09/2007

ORAL JUDGMENT

1. Heard Mr. J.V. Japee, learned advocate appearing for the appellant and Ms. D.S. Pandit, learned A.P.P. for the State.

2. The appellant - original accused has assailed the legality and validity of the judgment and order of conviction and sentence passed by the learned Additional Sessions Judge (Fast Track Court), Himatnagar in Sessions Case No.64 of 2003 on 15.10.2003. The total two accused persons were tried and chargesheeted for the offence punishable under Section 489 (A), 489 (B) and 489 (C) of Indian Penal Code. The present appellant No.1 is the original accused No.1 of the said Sessions Case tried and resulted into conviction and the appellant - accused No.2 is acquitted from all charges. The learned trial Judge has acquitted even the present appellant - accused No.1 from the charges for the offence punishable under Section 489 (A) of Indian Penal Code. However, the learned trial Judge held the appellant - accused No.1 guilty of the charge for the offence punishable under Section 489 (B) and 489 (C). For the offence punishable under Section 489 (B), the appellant - accused No.1 is ordered to undergo R.I. for seven years and to pay a fine of Rs.5,000/-, in default, punishment is for the said offence is S.I. for one year. For another offence punishable under Section 489 (C), the appellant - accused No.1 is sentenced to undergo R.I. for five years and to pay a fine of Rs.2,000/-, in default, the punishment imposed is of six months S.I.

This very order of conviction and sentence has been challenged by the present appellant - accused No.1.

3. Mr. Japee, learned advocate and Ms. D.S. Pandit, learned A.P.P. have taken me through the relevant - oral as well as documentary evidence led before the learned trial Court. The sum and substance of the case of the prosecution is that on receipt of the information, the police had organised the trap and the accused, when he was shwoing with fake counterfeit currency notes, he was caught. The trap officer then arrested him with the conscious possession of such currency notes with the container i.e. the bag, that the appellant - accused No.1 was carrying with him, thus he was found with fake currency notes of Rs.1,60,000/-.

4. After some deliberations, Mr. Japee submitted that he is not pressing the appeal so far as the order of conviction is concerned, as the same is based on sound reasons. Even otherwise, it is possible for this Court to say that the recording of the conviction by the learned trial Judge is legal and in accordance with law and therefore, there is no error committed by the learned trial Judge in appreciating evidence has been led nor there is any infirmity in findings, which would go to the root of the illegality and validity of the order of conviction.

5. The arguments advanced by Mr. Japee is in two folds. The first arguments advanced initially, which is in reference to the order of the conviction, but ultimately, he has not pressed appeal for the order of conviction recorded by the learned trial Judge. The Court obviously shall have to dealt with it. The second fold of the submission, which is in reference to the quantum of punishment imposed by the learned trial Judge. According to Mr. Japee, in view of the facts and circumstances of the case, the Court can impose life imprisonment, but otherwise the period of quantum of punishment prescribed under Section 489 (B) is upto 10 years, so the learned trial Judge can impose R.I. for 10 years. The learned trial Judge ought to have seen the scheme of Section 489 (B) and fact of the present case is that when the P.S.I. has not supported the case of the prosecution and the case raised on evidence of the police witnesses examined during the trial and panchnama of seizure etc. the imprisonment for five years would have been adequate punishment i.e. half of the period. On quantum of punishment prescribed, the learned trial Judge while discussing the aspects of the quantum of punishment is not either observed nor recorded in reason that this is a case where severe punishment of either 10 years or life imprisonment is required to be imposed. So, it is submitted by Mr. Japee that when the appellant - accused No.1 is in prison since long, the substantive sentence imposed for the offence punishable under Section 489 (B) may be reduced to 5

years R.I. and it cannot be said to be a lenient punishment.

6. The learned A.P.P. Ms. D.S. Pandit submits that the circulation of fake currency notes is nothing but slow poison in the economy of the country and therefore, only the punishment upto 10 years has been prescribed and in exceptional case, the Court can even impose life imprisonment.

7. The appellant - accused No.1 in the present case was found with fake currency notes, were of Rs.1,60,000/-, it cannot be said to be big stock. It is also relevant to note that the police has not successfully proved the crime or found in the crime committed by the appellant - accused No.1 that he was also concerning with the carving out counterfeit notes meaning thereby actual manufacturing process etc. It is very likely to note that he might have been used by the bosses dealing in the activities of circulating fake currency notes in the economy otherwise the appellant - accused No.1 could have reached to larger number of currency notes. The scope of punishment imposed by the learned trial Judge for the offence punishable under Section 489 (C) is of five years, so for both these offences, five years R.I. would have been imposed then it also may have served the purpose. Ultimately, the quantum of punishment should be of the nature, which can carry the message of

deterence in the society. It was not the case that the appellant is habitual and that offence of similar nature is even pending, he was caught in the present crime.

8. The Court should look the concept the reformation of an individual in mind, while imposing punishment. If the appellant was a victim then he can be given some opportunity to improve himself and in present case, since long, he is in jail. So, if the substantive sentence imposed for the offence punishable under Section 489 (B) is reduced to five years accepting the submissions of Mr. Japee, it would be just and proper. It is not the case of the prosecution that on the date of offence, the appellant - accused was habitual and no such other or similar cases were pending against him. So some leniency can be shown to the appellant. Therefore, accepting the say of Mr. Japee, the quantum of punishment imposed by the learned trial Judge requires to be altered.

9. So far as the punishment for the offence punishable under Section 489 (C) for five years is concerned, no alteration is called for. Ultimately, the accused has to undergo substantive sentence concurrently. According to Mr. Japee, the amount of fine imposed by the learned trial Court has been paid, otherwise he shall have to undergo in default punishment imposed by the learned trial Judge because that order is not required to

be interfered being reasonable legal.

10. In view of the above, present appeal is partly allowed.

11. The judgment and order of conviction for both the offences is confirmed. But the order of sentence passed by the learned Additional Sessions Judge, (Fast Track Court), Himatnagar in Sessions Case No.64 of 2003, so far as the offence punishable under Section 489(B) of Indian Penal Code imposing R.I. for seven years is hereby modified and reduce to the punishment and sentence to five years from seven years. Now, the appellant is ordered to undergo R.I. for five (5) years for the said offence. The amount of fine imposed by the learned trial Judge for the said offence is upheld and shall remain unaltered.

12. The sentence imposed for the offence punishable under Section 489 (C) is hereby confirmed.

13. If the accused has already served the sentence including in-default punishment imposed by the learned trial Court of five years and fine with the advantage available to him under Section 428 of Cr.P.C. etc., the appellant shall be set at liberty forthwith provided that he is not required by the Jail Authorities in any other case. Order and direction

accordingly.

(C.K. BUCH, J.)

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